WISCONSIN LAW REVIEW

VOLUME 1995
INDEX

CONTENTS

AUTHOR INDEX 1512

TITLE INDEX 1514

SUBJECT INDEX 1517

Copyright 1995 by the
Board of Regents of the University of Wisconsin System

AUTHOR INDEX

ABRAHAMSON, THE HONORABLE SHIRLEY S.: *Refreshing Institutional Memories: Wisconsin and the American Law Institute*—The Fairchild Lecture 1
AMMONS, LINDA L.: *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome* 1003
BARTLETT, KATHARINE T.: *Tradition, Change, and the Idea of Progress in Feminist Legal Thought* 303
BRUSKY, AMY ELIZABETH: *Comment, Making Decisions for Deaf Children Regarding Cochlear Implants: The Legal Ramifications of Recognizing Deafness as a Culture Rather Than a Disability* 235
CARSTENSEN, PETER C. & OLSZOWKA, PAUL: *Antitrust Law, Student-Athletes, and the NCAA: Limiting the Scope and Conduct of Private Economic Regulation* 545
CLARKOWSKI, ANDREW J.: *Comment,* Shaw v. Reno *and Formal Districting Criteria: A Short History of a Jurisprudence That Failed in Wisconsin* 271
COLLINS, MICHAEL G.: *Article III Cases, State Court Duties, and the Madisonian Compromise* 39
DAVIS, TIMOTHY: *A Model of Institutional Governance for Intercollegiate Athletics* . 599
EMORY, JR, JOHN D.: *Comment, The Role of Discounts in Determining "Fair Value" Under Wisconsin's Dissenters' Rights Statutes: The Case for Discounts.* . . . 1155
GEORGE, B. GLENN: *Who Plays and Who Pays: Defining Equality in Intercollegiate Athletics* 647
GLENNON, THERESA: *Race, Education, and the Construction of a Disabled Class* . 1237
GLUSMAN, LAWRENCE J.: *Comment, It's My Copy, Right? Music Industry Power to Control Growing Resale Markets in Used Digital Audio Recordings* 709
GONRING, BENJAMIN C.: *Comment, Has the Legislature Thrown Us a Curve? An Analysis of Wisconsin's "Three Strikes" Law* 933
HASKO, JUDITH A.: *Note,* Daubert v. Merrell Dow Pharmaceuticals, Inc.*: Flexible Judicial Screening of Scientific Expert Evidence Under Federal Rule of Evidence 702* 479
HASNAS, JOHN: *The Myth of the Rule of Law* 199
KNOPF, CHRISTOPHER D.: *Closing the Loop: Requiring Double-Sided Copying and Non-Chlorine Bleached Recycled Paper for Federal Court Papers* 345
LARSON, ELIZABETH A.: *Note, Did Congress Intend to Give Patients the Right to Demand and Receive Inappropriate Medical Treatments?: EMTALA Reexamined in Light of* Baby K 1425
LIESER, HEATHER ANN: *Note,* State v. Camacho: *The Judicial Creation of an Objective Element to Wisconsin's Law of Imperfect Self-Defense Homicide* 741
NAGLE, JOHN COPELAND: *Waiving Sovereign Immunity in an Age of Clear Statement Rules* 771
NEUMAN, RITA M.: *Note, Closing the Door on Cohabitants Under Wisconsin's Open Housing Law* 965
PUGLIESE, III, SEBASTIAN C.: *Comment, Environmental Justice: Lowering Barriers to Participation* 1177
RANDALL, SUSAN: *Coordinating Liability Insurance* 1339
RUBIN, EDWARD L.: *Institutional Analysis and the New Legal Process* 463
SCHAFFNER, JOAN E.: *Patent Preemption UnLocked* 1081

SEM, MICHAEL G.: *Note,* Szarzynski v. YMCA, Camp Minikani*: Protecting Nonprofit Organizations From Liability Under the Recreational Use Statute* 1209
SKEEL, JR., DAVID A.: *Some Corporate and Securities Law Perspectives on Student Athletes and the NCAA* 669
SKILTON, JOHN S.: *Turning the Pages: A Speech to Commemorate the 75th Anniversary of the* Wisconsin Law Review 1461
SLOAN, MICHAEL C.: *Comment, Disparate Impact in the Age Discrimination in Employment Act: Will the Supreme Court Permit It?* 507
STEINKE, SUZANNE M.: *Comment, The Exception to the Rule: Wisconsin's Fundamental Right to Education and Public School Financing* 1387
TOBIAS, CARL: *Stuck Inside the Heartland With Those Coastline Clerking Blues Again* 919
VERKERKE, J. HOULT: *An Empirical Perspective on Indefinite Term Employment Contracts: Resolving the Just Cause Debate* 837
WUSSOW, MICHAEL H.: *A Law Review for Wisconsin* 1475
YABLON, CHARLES M.: *Judicial Drag: An Essay on Wigs, Robes and Legal Change* 1129

TITLE INDEX

ADDRESSES

REFRESHING INSTITUTIONAL MEMORIES: WISCONSIN AND THE AMERICAN LAW INSTITUTE—*THE FAIRCHILD LECTURE:*
The Honorable Shirley S. Abrahamson 1
TURNING THE PAGES: A SPEECH TO COMMEMORATE THE 75TH ANNIVERSARY OF THE *WISCONSIN LAW REVIEW:*
John S. Skilton 1461

ARTICLES

MULES, MADONNAS, BABIES, BATHWATER, RACIAL IMAGERY AND STEREOTYPES: THE AFRICAN-AMERICAN WOMAN AND THE BATTERED WOMAN SYNDROME:
Linda L. Ammons 1003
TRADITION, CHANGE, AND THE IDEA OF PROGRESS IN FEMINIST LEGAL THOUGHT:
Katharine T. Bartlett 303
ARTICLE III CASES, STATE COURT DUTIES, AND THE MADISONIAN COMPROMISE:
Michael G. Collins 39
RACE, EDUCATION, AND THE CONSTRUCTION OF A DISABLED CLASS:
Theresa Glennon 1237
THE MYTH OF THE RULE OF LAW:
John Hasnas 199
CLOSING THE LOOP: REQUIRING DOUBLE-SIDED COPYING AND NON-CHLORINE BLEACHED RECYCLED PAPER FOR FEDERAL COURT PAPERS:
Christopher D. Knopf 345
WAIVING SOVEREIGN IMMUNITY IN AN AGE OF CLEAR STATEMENT RULES:
John Copeland Nagle 771
COORDINATING LIABILITY INSURANCE:
Susan Randall 1339
PATENT PREEMPTION UNLOCKED:
Joan E. Schaffner 1081
AN EMPIRICAL PERSPECTIVE ON INDEFINITE TERM EMPLOYMENT CONTRACTS: RESOLVING THE JUST CAUSE DEBATE:
J. Hoult Verkerke 837

BOOK REVIEW

INSTITUTIONAL ANALYSIS AND THE NEW LEGAL PROCESS:
Edward L. Rubin 463

FORUM

STUCK INSIDE THE HEARTLAND WITH THOSE COASTLINE CLERKING BLUES AGAIN:
Carl Tobias 919
JUDICIAL DRAG: AN ESSAY ON WIGS, ROBES AND LEGAL CHANGE:
Charles M. Yablon 1129
A LAW REVIEW FOR WISCONSIN:
Michael H. Wussow 1475

STUDENT PIECES

MAKING DECISIONS FOR DEAF CHILDREN REGARDING COCHLEAR IMPLANTS: THE LEGAL RAMIFICATIONS OF RECOGNIZING DEAFNESS AS A CULTURE RATHER THAN A DISABILITY
Amy Elizabeth Brusky 235
SHAW V. RENO AND FORMAL DISTRICTING CRITERIA: A SHORT HISTORY OF A JURISPRUDENCE THAT FAILED IN WISCONSIN:
Andrew J. Clarkowski 271
THE ROLE OF DISCOUNTS IN DETERMINING "FAIR VALUE" UNDER WISCONSIN'S DISSENTERS' RIGHTS STATUTES: THE CASE FOR DISCOUNTS:
John D. Emory, Jr. 1155
IT'S MY COPY, RIGHT? MUSIC INDUSTRY POWER TO CONTROL GROWING RESALE MARKETS IN USED DIGITAL AUDIO RECORDINGS:
Lawrence J. Glusman 709
HAS THE LEGISLATURE THROWN US A CURVE? AN ANALYSIS OF WISCONSIN'S "THREE STRIKES" LAW:
Benjamin C. Gonring 933
DAUBERT V. MERRELL DOW PHARMACEUTICALS, INC.: FLEXIBLE JUDICIAL SCREENING OF SCIENTIFIC EXPERT EVIDENCE UNDER FEDERAL RULE OF EVIDENCE 702:
Judith A. Hasko 479
DID CONGRESS INTEND TO GIVE PATIENTS THE RIGHT TO DEMAND AND RECEIVE INAPPROPRIATE MEDICAL TREATMENTS?: EMTALA REEXAMINED IN LIGHT OF *BABY K*:
Elizabeth A. Larson 1425
STATE V. CAMACHO: THE JUDICIAL CREATION OF AN OBJECTIVE ELEMENT TO WISCONSIN'S LAW OF IMPERFECT SELF-DEFENSE HOMICIDE:
Heather Ann Lieser 741
CLOSING THE DOOR ON COHABITANTS UNDER WISCONSIN'S OPEN HOUSING LAW
Rita M. Neuman 965
ENVIRONMENTAL JUSTICE: LOWERING BARRIERS TO PARTICIPATION
Sebastian C. Pugliese, III 1177
SZARZYNSKI V. YMCA, CAMP MINIKANI: PROTECTING NONPROFIT ORGANIZATIONS FROM LIABILITY UNDER THE RECREATIONAL USE STATUTE
Michael G. Sem 1209
DISPARATE IMPACT IN THE AGE DISCRIMINATION IN EMPLOYMENT ACT: WILL THE SUPREME COURT PERMIT IT?
Michael C. Sloan 507
THE EXCEPTION TO THE RULE: WISCONSIN'S FUNDAMENTAL RIGHT TO EDUCATION AND PUBLIC SCHOOL FINANCING
Suzanne M. Steinke 1387

SYMPOSIUM

ANTITRUST LAW, STUDENT-ATHLETES, AND THE NCAA: LIMITING THE SCOPE AND CONDUCT OF PRIVATE ECONOMIC REGULATION:
Peter C. Carstensen & Paul Olszowka 545
A MODEL OF INSTITUTIONAL GOVERNANCE FOR INTERCOLLEGIATE ATHLETICS:
Timothy Davis 599
WHO PLAYS AND WHO PAYS: DEFINING EQUALITY IN INTERCOLLEGIATE ATHLETICS:
B. Glenn George 647
SOME CORPORATE AND SECURITIES LAW PERSPECTIVES ON STUDENT ATHLETES:
David A. Skeel, Jr. 669

SUBJECT INDEX

ANTITRUST LAW

Carstensen, *Antitrust Law, Student-Athletes, and the NCAA: Limiting the Scope and Conduct of Private Economic Regulation* 545

CONSTITUTIONAL LAW

Bartlett, *Tradition, Change, and the Idea of Progress in Feminist Legal Thought* 303
Clarkowski, Shaw v. Reno *and Formal Districting Criteria: A Short History of a Jurisprudence That Failed in Wisconsin* 271
Collins, *Article III Cases, State Court Duties, and the Madisonian Compromise* 39
Schaffner, *Patent Preemption UnLocked* 1081
Sem, Szarzynski v. YMCA, Camp Minikani*: Protecting Nonprofit Organizations From Liability Under the Recreational Use Statute* 1209
Steinke, *The Exception to the Rule: Wisconsin's Fundamental Right to Education and Public School Financing* 1387

CONTRACT LAW

Verkerke, *An Empirical Perspective on Indefinite Term Employment Contracts: Resolving the Just Cause Debate* 837

CORPORATE LAW

Emory, *The Role of Discounts in Determining "Fair Value" Under Wisconsin's Dissenters' Rights Statutes: The Case for Discounts.* 1155
Skeel, *Some Corporate and Securities Law Perspectives on Student Athletes and the NCAA* 669

CRIMINAL LAW

Gonring, *Has the Legislature Thrown Us a Curve? An Analysis of Wisconsin's "Three Strikes" Law* 933
Lieser, State v. Camacho: *The Judicial Creation of an Objective Element to Wisconsin's Law of Imperfect Self-Defense Homicide* 741

DISABILITY LAW

Brusky, *Making Decisions for Deaf Children Regarding Cochlear Implants: The Legal Ramifications of Recognizing Deafness as a Culture Rather Than a Disability* 235
Glennon, *Race, Education, and the Construction of a Disabled Class* 1237

EDUCATION AND THE LAW

Glennon, *Race, Education, and the Construction of a Disabled Class* 1237
Steinke, *The Exception to the Rule: Wisconsin's Fundamental Right to Education and Public School Financing* 1387

EMPLOYMENT LAW

Verkerke, *An Empirical Perspective on Indefinite Term Employment Contracts: Resolving the Just Cause Debate* 837

ENVIRONMENTAL LAW

Knopf, *Closing the Loop: Requiring Double-Sided Copying and Non-Chlorine Bleached Recycled Paper for Federal Court Papers* 345
Pugliese, *Environmental Justice: Lowering Barriers to Participation* 1177

FAMILY LAW

Neuman, *Closing the Door on Cohabitants Under Wisconsin's Open Housing Law* 965

FEDERAL COURTS

Collins, *Article III Cases, State Court Duties, and the Madisonian Compromise* 39
Tobias, *Stuck Inside the Heartland With Those Coastline Clerking Blues Again* 919

FEDERAL LEGISLATION

George, *Who Plays and Who Pays: Defining Equality in Intercollegiate Athletics* 647
Hasko, Daubert v. Merrell Dow Pharmaceuticals, Inc.: *Flexible Judicial Screening of Scientific Expert Evidence Under Federal Rule of Evidence 702* 479
Larson, *Did Congress Intend to Give Patients the Right to Demand and Receive Inappropriate Medical Treatments?: EMTALA Reexamined in Light of* Baby K 1425
Nagle, *Waiving Sovereign Immunity in an Age of Clear Statement Rules* 771
Schaffner, *Patent Preemption UnLocked* 1081

GENDER AND THE LAW

Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome* 1003
Bartlett, *Tradition, Change, and the Idea of Progress in Feminist Legal Thought* 303
George, *Who Plays and Who Pays: Defining Equality in Intercollegiate Athletics* 647

HEALTH LAW

Larson, *Did Congress Intend to Give Patients the Right to Demand and Receive Inappropriate Medical Treatments?: EMTALA Reexamined in Light of* Baby K 1425

HUMOR

Yablon, *Judicial Drag: An Essay on Wigs, Robes and Legal Change* 1129

INSURANCE LAW

Randall, *Coordinating Liability Insurance* 1339

INTELLECTUAL PROPERTY LAW

Glusman, *It's My Copy, Right? Music Industry Power to Control Growing Resale Markets in Used Digital Audio Recordings* 709
Schaffner, *Patent Preemption UnLocked* 1081

JUVENILES AND THE LAW

Brusky, *Making Decisions for Deaf Children Regarding Cochlear Implants: The Legal Ramifications of Recognizing Deafness as a Culture Rather Than a Disability* 235

LANDLORD-TENANT

Neuman, *Closing the Door on Cohabitants Under Wisconsin's Open Housing Law* 965

LAW AND ECONOMICS

Pugliese, *Environmental Justice: Lowering Barriers to Participation* 1177

LAW REVIEW

Skilton, *Turning the Pages: A Speech to Commemorate the 75th Anniversary of the* Wisconsin Law Review 1461
Wussow, *A Law Review for Wisconsin* 1475

LEGAL PROCESS

Abrahamson, *Refreshing Institutional Memories: Wisconsin and the American Law Institute*—The Fairchild Lecture 1
Rubin, *Institutional Analysis and the New Legal Process* 463

PHILOSOPHY

Hasnas, *The Myth of the Rule of Law* 199

RACE/ETHNICITY AND THE LAW

Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome* 1003
Glennon, *Race, Education, and the Construction of a Disabled Class* 1237

SPEECHES/ADDRESSES

Abrahamson, *Refreshing Institutional Memories: Wisconsin and the American Law Institute*—The Fairchild Lecture 1
Skilton, *Turning the Pages: A Speech to Commemorate the 75th Anniversary of the* Wisconsin Law Review 1461

SPORTS LAW

Carstensen, *Antitrust Law, Student-Athletes, and the NCAA: Limiting the Scope and Conduct of Private Economic Regulation* 545
Davis, *A Model of Institutional Governance for Intercollegiate Athletics* 599
George, *Who Plays and Who Pays: Defining Equality in Intercollegiate Athletics* 647
Skeel, *Some Corporate and Securities Law Perspectives on Student Athletes and the NCAA* 669

STATUTORY CONSTRUCTION

Nagle, *Waiving Sovereign Immunity in an Age of Clear Statement Rules* 771

TORTS LAW

Sem, Szarzynski v. YMCA, Camp Minikani*: Protecting Nonprofit Organizations From Liability Under the Recreational Use Statute* 1209

WISCONSIN LAW

Clarkowski, Shaw v. Reno *and Formal Districting Criteria: A Short History of a Jurisprudence That Failed in Wisconsin* 271
Emory, *The Role of Discounts in Determining "Fair Value" Under Wisconsin's Dissenters' Rights Statutes: The Case for Discounts.* . . . 1155
Gonring, *Has the Legislature Thrown Us a Curve? An Analysis of Wisconsin's "Three Strikes" Law* 933
Lieser, State v. Camacho: *The Judicial Creation of an Objective Element to Wisconsin's Law of Imperfect Self-Defense Homicide* 741
Neuman, *Closing the Door on Cohabitants Under Wisconsin's Open Housing Law* 965
Sem, Szarzynski v. YMCA Camp Minikani*: Protecting Nonprofit Organizations From Liability Under the Recreational Use Statute* 1209
Steinke, *The Exception to the Rule: Wisconsin's Fundamental Right to Education and Public School Financing* 1387

VOTING RIGHTS

Clarkowski, Shaw v. Reno *and Formal Districting Criteria: A Short History of a Jurisprudence That Failed in Wisconsin* 271